

**EXHIBIT 1**

**SOLICITATION AND VOTING PROCEDURES**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

Chapter 11

EAST BROADWAY MALL,

Case No. 19-12280 -DSJ

Debtor.

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**SOLICITATION AND VOTING PROCEDURES**

**PLEASE TAKE NOTICE THAT** on [●], the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) entered an order (the “**Disclosure Statement Order**”), (a) authorizing Bank of Hope f/k/a BBCN Bank (“**Bank of Hope**” or “**Bank**”), secured creditor for the chapter 11 estate (the “**Estate**”) of the above-captioned debtor, East Broadway Mall (“**Debtor**” or “**EBM**”) to solicit acceptances for the *Chapter 11 Plan of Liquidation* (as may be modified, amended, or supplemented from time to time, the “**Plan**”);<sup>5</sup> (b) approving the *Disclosure Statement for the Chapter 11 Plan of Liquidation* (the “**Disclosure Statement**”) as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “**Solicitation Packages**”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

**A. The Voting Record Date.**

The Court has approved **January 6, 2023** as the record date for purposes of determining which Holders of Claims in Classes 4A, 4B, and 4C are entitled to vote on the Plan (the “**Voting Record Date**”).

**B. The Voting Deadline.**

The Court has approved **February 22, 2023 at 4:00 p.m.** prevailing Eastern Time as the voting deadline (the “**Voting Deadline**”) for the Plan. The Bank may extend the Voting Deadline, in their discretion, without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots sent to registered Holders of Claims (each, a “**Ballot**”) must be properly executed, completed, and returned in the pre-paid, pre-addressed return envelope included in the Solicitation Package or delivered by: (1) first class mail; (2) overnight courier; (3) personal delivery; or (4) electronic mail, so that they are **actually received**, in any case, no later than the Voting Deadline by the Bank (the “**Voting and Claims Agent**”).<sup>6</sup> All Ballots should be sent to:

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<sup>5</sup> Capitalized terms not otherwise defined herein shall have the same meanings set forth in the Disclosure Statement.

<sup>6</sup> For any Ballot cast via electronic mail, the format of the attachment must be found in the common workplace and industry standard format (i.e., industry-standard PDF file) and the received date and time in the Voting and Claims Agent’s inbox will be used as the timestamp for receipt.

(1) if by mail, Windels Marx Lane & Mittendorf, LLP Re: East Broadway Mall, 156 West 56<sup>th</sup> Street, New York, NY 10019 (2) if by hand delivery or overnight courier, Windels Marx Lane & Mittendorf, LLP Re: East Broadway Mall, 156 West 56<sup>th</sup> Street, New York, NY 10019; or (3) if via electronic mail, JSullivan@Windelsmarx.com. Delivery of a Ballot to the Voting and Claims Agent by facsimile shall not be valid.

**C. Form, Content, and Manner of Notices.**

**1. The Solicitation Package.**

The following materials shall constitute the solicitation package (the “**Solicitation Package**”):

- a. a copy of these Solicitation and Voting Procedures;
- b. the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed by the Bank And Related Voting And Objection Deadlines*, in substantially the form annexed as **Exhibit 7** to the Disclosure Statement Order (the “**Plan Confirmation Hearing Notice**”);
- c. a cover letter, in substantially the form annexed as **Exhibit 6** to the Disclosure Statement Order describing the contents of the Solicitation Package and urging the Holders of Claims in the Voting Classes to vote to accept the Plan;
- d. the applicable form of Ballot, in substantially the form annexed as **Exhibits 2a, 2b, and 2c** to the Disclosure Statement Order, including a pre-paid, pre-addressed return envelope;
- e. the approved Disclosure Statement (and exhibits thereto, including the Plan);
- f. the Disclosure Statement Order (without exhibits); and
- g. any additional documents that the Court has ordered to be made available.

**2. Distribution of the Solicitation Package.**

The Solicitation Package shall provide the Plan, the Disclosure Statement, and the Disclosure Statement Order (without exhibits, except the Solicitation and Voting Procedures) in electronic format, and all other contents of the Solicitation Package, including Ballots, shall be provided in paper format. Any party that receives the materials in electronic format but would prefer paper format may contact the Voting and Claims Agent by: (a) writing to Windels Marx Lane & Mittendorf, LLP Re: East Broadway Mall, 156 West 56<sup>th</sup> Street, New York, NY 10019;

and/or (b) emailing JSullivan@Windelsmarx.com and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Estate's expense).

The Bank shall serve, or cause to be served, all of the materials in the Solicitation Package (excluding the Ballots) on the U.S. Trustee and all parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 as of the Voting Record Date. In addition, the Bank shall mail, or cause to be mailed, the Solicitation Package to all Holders of Claims in the Voting Classes on or before **January 16, 2023** who are entitled to vote, as described in section D below.

To avoid duplication and reduce expenses, the Bank will use commercially reasonable efforts to ensure that any Holder of a Claim who has filed duplicative Claims against the Debtor that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class as against that Debtor.

**3. Resolution of Disputed Claims for Voting Purposes; Resolution Event.**

- a. Absent a further order of the Court, the Holder of a Claim or Interest in the Voting Classes that is the subject of a pending objection filed with the Court by the Bank on a "reduce and allow" basis shall be entitled to vote such Claim in the reduced amount contained in such objection.
- b. If a Claim or Interest in a Voting Class is subject to an objection other than a "reduce and allow" objection that is filed with the Court by the Bank no later than the Solicitation Launch Date: (i) the Bank shall cause the applicable Holder to be served with a Disputed Claim Notice substantially in the form annexed as **Exhibit 5** to the Disclosure Statement Order; and (ii) the applicable Holder shall not be entitled to vote to accept or reject the Plan on account of such claim unless a Resolution Event (as defined herein) occurs as provided herein.
- c. If a Claim or Interest in a Voting Class is subject to an objection other than a "reduce and allow" objection that is filed with the Court by the Bank after the Solicitation Launch Date, the applicable Claim shall be deemed temporarily allowed for voting purposes only, without further action by the Holder of such Claim and without further order of the Court, unless the Court orders otherwise.
- d. A "**Resolution Event**" means the occurrence of one or more of the following events no later than three business days prior to the Voting Deadline:
  - i. an order of the Court is entered allowing such Claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;

- ii. an order of the Court is entered temporarily allowing such Claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
  - iii. a stipulation or other agreement is executed between the Holder of such Claim and the Bank resolving the objection and allowing such Claim in an agreed upon amount; or
  - iv. the pending objection is voluntarily withdrawn by the Bank.
- e. No later than one business day following the occurrence of a Resolution Event, the Bank shall cause the Voting and Claims Agent to distribute via email, hand delivery, or overnight courier service a Solicitation Package and a pre-addressed, postage pre-paid envelope to the relevant Holder.

**4. Non-Voting Status Notices for Unimpaired Classes and Classes Deemed to Reject the Plan.**

Certain Holders of Claims or Interests that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are Unimpaired or otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code will receive only the Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan, substantially in the form annexed as **Exhibit 3** to the Disclosure Statement Order. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots). Certain Holders of Claims and Interests who are not entitled to vote because they are deemed to reject the Plan under section 1126(g) of the Bankruptcy Code will receive the Notice of Non-Voting Status to Holders of Impaired Claims and Equity Interests Deemed to Reject the Plan, substantially in the form annexed as **Exhibit 4** to the Disclosure Statement Order. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots).

**5. Notices in Respect of Executory Contracts and Unexpired Leases.**

Counterparties to Executory Contracts and Unexpired Leases that receive a Notice of Assumption of Executory Contracts and Unexpired Leases or Notice of Rejection of Executory Contracts and Unexpired Leases substantially in the forms attached as **Exhibit 9** and **Exhibit 10** to the Disclosure Statement Order, respectively, may file an objection to the Bank's proposed assumption, rejection, and/or cure amount, as applicable. Such objections must be actually received by the Voting and Claims Agent by **February 22, 2023, at 4:00 p.m.** prevailing Eastern Time.

**D. Voting and Tabulation Procedures.**

**1. Holders of Claims entitled to Vote.**

Only the following Holders of Claims in the Voting Classes shall be entitled to vote with regard to such Claims:

- a. holders of Claims who, on or before the Voting Record Date, have timely filed a Proof of Claim (or an untimely Proof of Claim that has been Allowed as timely by the Court under applicable law on or before the Voting Record Date) that: (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date; and (ii) is not the subject of a pending objection filed with the Court by the Bank at least seven days prior to the Voting Deadline, pending a Resolution Event as provided herein; provided that a Holder of a Claim or Interest that is the subject of a pending objection on a “reduce and allow” basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection absent a further order of the Court;
- b. holders of Claims that are listed in the Schedules; provided that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated shall be allowed to vote only in the amount of \$1.00;
- c. holders whose Claims arise: (i) pursuant to an agreement or settlement with the Debtor, as reflected in a document filed with the Court, (ii) in an order entered by the Court, or (iii) in a document executed by the Debtor pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed;
- d. holders of any Disputed Claim that has been temporarily allowed to vote on the Plan pursuant to Bankruptcy Rule 3018; and
- e. with respect to any Entity described in subparagraphs (a) through (d) above, who, on or before the Voting Record Date, has transferred such Entity’s Claim to another Entity, the assignee of such Claim; provided that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register on the Voting Record Date.

**2. Establishing Claim Amounts for Voting Purposes.**

**Class 4A Claims.** The Claims amount of Class 4A Claims for voting purposes only will be established based on the amount after claims in classes 1, 2, 3B, and 4B are paid in full.

**Class 4B Claims.** The Claims amount of Class 4B Claims for voting purposes only will be established based on the amount of a pro rata distribution of Estate assets on account of Allowed Claims after claims 1, 2, 3B, 4A and 4C are paid in full.

**Class 4C Claims.** The Claims amount of Class 4C Claims for voting purposes only will be established based on the amount equal to 10% of its allowed claim capped at \$2000.

If a Proof of Claim is amended, the last filed claim shall be subject to these rules and will supersede any earlier filed claim, and any earlier filed claim will be disallowed for voting purposes.

**File/Scheduled Claims.** The Claim amount established herein shall control for voting purposes only and shall not constitute the Allowed amount of any Claim. Moreover, any amounts filled in on Ballots by the Bank through the Voting and Claims Agent, as applicable, are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy shall be used to determine the amount of the Claim associated with each claimant's vote:

- a. the Claim amount: (i) settled and/or agreed upon by the Bank, as reflected in a document filed with the Court, (ii) set forth in an order of the Court, or (iii) set forth in a document executed by the Bank pursuant to authority granted by the Court;
- b. the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event under the procedures set forth in the Solicitation and Voting Procedures;
- c. the Claim amount contained in a Proof of Claim that has been timely filed (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; provided, that Ballots cast by Holders of Claims who timely file a Proof of Claim in respect of a contingent Claim or in a wholly-unliquidated or unknown amount that is not the subject of an objection will count for satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as Ballots for Claims in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and, if a Proof of Claim is filed as partially liquidated and partially unliquidated, such Claim will be Allowed for voting purposes only in the liquidated amount; provided, further, that to the extent the Claim amount contained in the Proof of Claim is different from the Claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the Claim amount in the document filed with the Court shall supersede the Claim amount set forth on the respective Proof of Claim;
- d. the Claim amount listed in the Schedules; provided that such Claim is not scheduled as contingent, disputed, or unliquidated and/or has not been paid; provided, further, that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as

contingent, disputed, or unliquidated shall be allowed to vote only in the amount of \$1.00; and

- e. in the absence of any of the foregoing, such Claim shall be disallowed for voting purposes unless otherwise ordered by the Court.

### **3. Voting and Ballot Tabulation Procedures.**

The following voting procedures and standard assumptions shall be used in tabulating Ballots, subject to the Bank's right to waive any of the below specified requirements for completion and submission of Ballots so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Rules:

- a. except as otherwise provided in the Solicitation and Voting Procedures, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the Bank or by order of the Court), the Bank shall reject such Ballot as invalid and, therefore, shall not count it in connection with Confirmation of the Plan;
- b. the Voting and Claims Agent will date-stamp all Ballots when received. The Voting and Claims Agent shall retain the original Ballots and an electronic copy of the same for a period of one year after the Effective Date of the Plan, unless otherwise ordered by the Court;
- c. the Bank will file with the Court, not later than **February 27, 2023 at 4:00 p.m.**, prevailing Eastern Time a certification of votes (the "**Voting Report**"). The Voting Report shall, among other things, certify to the Court in writing the amount and number of allowed claims or allowed interests of each class accepting or rejecting the plan, and delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile, or damaged (each, an "**Irregular Ballot**"). The Voting Report shall indicate the Bank's intentions with regard to each such Irregular Ballot. The Voting Report shall be served upon the Committee and the U.S. Trustee;
- d. the method of delivery of Ballots to be sent to the Voting and Claims Agent is at the election and risk of each Holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Voting and Claims Agent actually receives the executed Ballot;
- e. an executed Ballot is required to be submitted by the Entity submitting such Ballot. Subject to the other procedures and requirements herein, completed,



executed Ballots may be submitted via electronic mail, in PDF format, to the Voting and Claims Agent at JSullivan@Windelsmarx.com. However, Ballots submitted by facsimile, or any electronic means other than as expressly provided in these Solicitation and Voting Procedures, will not be valid;

- f. no Ballot should be sent to the Bank, the Bank's agents (other than the Voting and Claims Agent), the Bank's financial or legal advisors, and if so sent will not be counted;
- g. if multiple Ballots are received from the same Holder with respect to the same Claim or Interest prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot; provided, however, if a Holder submits both a Class 4B and Class 4C Ballot, the Class 4C Ballot shall control.
- h. Holders must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims within the Voting Class, the Bank may, in its discretion, aggregate the Claims of any particular Holder for the purpose of counting votes;
- i. a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a Holder of Claims or Interest must indicate such capacity when signing;
- j. the Bank, subject to a contrary order of the Court, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report;
- k. neither the Bank, nor any other Entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;
- l. unless waived or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;

- m. in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim or Interest will be counted for purposes of determining whether the Plan has been accepted and/or rejected;
- n. if a Claim or Interest has been estimated or otherwise Allowed for voting purposes only by order of the Court, such Claim shall be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- o. if an objection to a Claim is filed, such Claim shall be treated in accordance with the procedures set forth herein;
- p. the following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the Holder of such Claim; (ii) Ballot cast by any Entity that does not hold a Claim in a Voting Class; (iii) any Ballot cast for a Claim scheduled as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed; **provided** that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated shall be allowed to vote only in the amount of \$1.00; (iv) any unsigned Ballot or Ballot lacking an original signature (for the avoidance of doubt, a Ballot cast via electronic mail will be deemed to be an original signature); (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (vi) any Ballot submitted by any Entity not entitled to vote pursuant to the procedures described herein;
- q. after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Bank;
- r. the Bank is authorized to enter into stipulations with the Holder of any Claim agreeing to the amount of a Claim for voting purposes; and
- s. where any portion of a single Claim has been transferred to a transferee, then all Holders of any portion of such single Claim will be: (i) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other voting and solicitation procedures set forth herein), and (ii) required to vote every portion of such Claim collectively to accept or reject the Plan. In the event that: (x) a Ballot, (y) a group of Ballots within a Voting Class received from a single creditor, or (z) a group of Ballots received from the various Holders of multiple

portions of a single Claim partially reject and partially accept the Plan, such Ballots shall not be counted.

**E. Amendments to the Plan and Solicitation and Voting Procedures.**

The Bank reserves the right to make non-substantive or immaterial changes to the Disclosure Statement, Disclosure Statement Hearing Notice, Plan, Plan Confirmation Hearing Notice, Solicitation Packages, Non-Voting Status Notices, Ballots, Cover Letter, Solicitation and Voting Procedures, Plan Supplement Notice, Assumption and Rejection Notices, Voting and Tabulation Procedures, and related documents without further order of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution.

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